HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SRI JUSTSICE C.V.NAGARJUNA REDDY

WRIT PETITION No.25192 of 2006

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Between:

Smt. Lakshmi Devi

... Petitioner

AND

The State of Andhra Pradesh, rep. by
its Chief Secretary, Govt., General Administration
(Law & Order, II) Department, Secretariat, Hyderabad
and three others

... Respondents

:: O R D E R ::

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Counsel for the petitioner : Shri Ch.Dhanamjaya for
Shri K.Ram Mohan Chowdary

Counsel for respondents : Assistant Government Pleader for Home.

9th February, 2007

Per G.S.Singhvi, C.J.

This is a petition for quashing order dated 28-4-2006 passed by Collector and District Magistrate, Anantapur District (respondent No.2) under Section 3(2) read with Section 3(1) of the Andhra Pradesh Prevention

of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short, 'the 1986 Act').

The petitioner's husband is said to be a coolie. He was involved in three cases bearing Crime No.148/05 dated
23-10-2005, Crime No.167/05-06 dated 12-12-2005 and Crime No.184/05-06 dated 27.1.2006 registered on the allegation that he was dealing in illicit liquor. In the first case, a raid was conducted and 150 arrack sachets were found in his possession. In the second case, 100 arrack sachets were found in his possession. In the third case, 85 arrack sachets were found in his possession. The Chemical Examiner, who analysed the samples of liquor, submitted a report with the finding that the sample is diluted arrack containing sediment unfit for human consumption and injurious to health. After taking into consideration the facts of the three cases registered against the petitioner's husband, respondent No.2 passed the impugned order.

The petitioner has questioned the order of detention primarily on the ground that the cases registered against her husband under Section 7-A read with Section 8(e) of the Andhra Pradesh Prohibition Act, 1968 do not warrant exercise of power under Section 3(1) read with Section 3(2) of the 1986 Act.

In her affidavit, respondent No.2 has justified and defended her action of passing the order of detention. For the sake of convenient reference, paragraph 3 of her affidavit is extracted below:

> "In reply to the allegation made in para 4 of the affidavit that the Sponsoring Authority did not place the relevant records before the Detaining

Authority in the three crimes registered against the detenu and in all the three crimes bail applications and bail orders were not placed before the Detaining Authority for arriving at the subjective satisfaction for detaining the detenu under Sections 3(1) and (2) read with Section 2(a) and (b) of Act 1/1986, it is submitted that I have passed the order of detention against the detenu after satisfying myself that the circumstances exist for passing the order of detention as the detenu was continuously indulging in selling of arrack which is injurious to health and unfit for human consumption and thereby causing danger to the public health which is prejudicial to the maintenance of public order. As the detenu is habitual offender, I have arrived at the subjective satisfaction basing on the material placed before me by the Sponsoring Authority and all the documents placed before me clearly show that the detenu is continuously indulging in bootlegging activities, adversely affecting public health and causing prejudicial to the maintenance of public order. The material relief upon by me for passing the order of detention were supplied to the detenu and the detenu has acknowledged the same. Hence I submit that bail applications and bail orders referred to in the affidavit under reply are not relief upon by me in passing the order of detention. They are only passingly referred to in the order of detention in the course of narration of events. As thes aid bail applications or bail orders were not relied on by me for passing the order of detention, failure to supply the same would not vitiate the order of detention. It is submitted that failure to supply the above said documents would not hamper the right of the detenu in making an effective representation under Article 22(5) of the Constitution of India. As such it cannot be said that the failure to supply the above documents by the detaining authority to the detenu is defective and the order of detention is liable to be set aside."

It is also borne out from the record that on receipt of recommendations made by the Advisory Board, the State Government issued G.O.Rt.No.s2316 dated 04.05.2006 and 2952 dated 08.06.2006 confirming the order of detention.

We have heard learned counsel for the parties. Section 3 of the Act, which empowers the State Government or its delegates to pass an order of detention, reads as under:

> "**3 Power to make orders detaining certain persons:-**
> (1)The Government may, if satisfied with respect to any boot legger, dacoit, drug offender, goonda, immoral traffic offender or land grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.
> (2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub section (1), exercise the powers conferred by the said sub section:
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> Provided that the period specified in the order made by the Government under this sub section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.
> (3) When any order is made under this section by an officer mentioned in sub section (2), he shall forthwith report the fact to the Government

> together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the Government."

A reading of the plain language of Section 3 (1) makes it clear that the government/competent authority can pass an order of detention only if it is satisfied that the activities of bootlegger, dacoit, drug-offender, goonda, immoral traffic offender or land-grabber is in any manner prejudicial to the maintenance of public order and it is necessary to prevent him from doing so.

In **E. Sumathamma v. The State of Andhra Pradesh**[1], a Full Bench of this Court considered whether every violation of the Excise Act could justify an order of preventive detention. While answering the question in negative, the Full Bench observed:

> "As there is no danger to public health or life if a person stocks genuine liquor, it cannot be said that he has acted in a manner prejudicial to the maintenance of public order. The act alleged may amount to an offence under the Excise Law but it will not justify preventive detention under the Act."

In **Boya Chinna Subbarayudu v. The Collector and District Magistrate, Kurnool**[2], a Division Bench of this Court again considered the same issue. The facts of that case show that the detenu was found in possession of 200 litres of fermented jaggery wash and 10 litres of illicitly distilled liquor respectively in two cases. He was detained under Section 3 (1) of the Act.

While quashing the order of detention, the Division Bench observed:

> "Everyone who answers the description of boot-legger cannot be detained preventively under the Act. The detaining authority must be satisfied that the detention is necessary with a view to preventing the person concerned from acting in any manner "prejudicial to the maintenance of public order" (vide Section 3(1)). The words "acting in any manner prejudicial to the maintenance of public order" are defined by Section 2(a) as meaning "when a boot-legger, a dacoit, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order". The explanation to clause (a) of Section 2 says:
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> > "For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely *inter alia*, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health".
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> It is therefore clear that a person who is a boot-legger by reason of his indulging in acts in contravention of the provisions of the A.P. Excise Act, the rules and the notifications and the orders made under that Act cannot be detained under Section 3(1) of the Act unless the acts in which he is indulging affect or likely to affect adversely the maintenance of public order. In other words only if the activities of the boot-legger cause "grave or

widespread danger to life or public health" he can be detained. If a boot-legger sells illicitly distilled arrack which contains harmful substances, certainly he can be detained on the ground that his activities constitute grave danger to life or public health.

The question to be considered is whether selling of illicit arrack itself is an act which constitutes a grave or widespread danger to life or public health? In our view the answer must be in the negative; unless the arrack illicitly sold contains substances which constitute grave danger to life or public health, no order of detention can be issued under Section 3 of the Act."

In **K. Chinnappa Reddy v. District Collector-cum-District Magistrate**[3], the Division Bench considered the legality of the order of detention passed on the basis of registration of three cases under the Excise Act. It referred to the Full Bench judgment in **Sumathamma's** case (supra) and quashed the order of detention by making the following observations:

"In the present case, first respondent, the detaining authority, has not mentioned in the grounds of detention that the arrack seized from the petitioner, the sales of which are attributed to the petitioner, if consumed, would result in grave or widespread danger to life or public health. The reports of the Regional Excise Laboratory also do not show that the arrack contains any harmful substance. Dealing with a similar contention in W.P. No.16671 of 1994, dated 17-10-1994 (Boya China Subbarayudu's case (4 supra)), Their Lordships held:

"Unless the grounds of detention specifically advert to the fact that the percentage of the fusel oil found in the seized liquor constitutes a grave or widespread danger to life or public

> health, it is not open to the detaining authority to order detention under Section 3 of the Act. Since that has not been done, we are constrained to hold that the fundamental right of the detenu under article 22 (5) of the Constitution is violated". "

I n **N. Rami Reddy v. Government of Andhra Pradesh**[4]**,** also the detenu was involved in three cases of possession of 5 litres, 1½ litres and 1 litre of illicitly distilled liquor, which was found on chemical analysis to be illicitly distilled liquor unfit for human consumption, but was not stated to be 'harmful'. While quashing the order of detention, the Division Bench observed:

> "The question to be considered is whether selling of illicit arrack itself is an act which constitutes a grave or widespread danger to life or public health? In our view the answer must be in the negative; unless the arrack illicitly sold contains substances which constitute grave danger to life or public health no order of detention can be issued under Section 3 of the Act."

In **Harpreet Kaur v. State of Maharashtra**[5], the Supreme Court interpreted Section 3 (1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981, which is substantially similar to Section 3 of the 1986 Act and held:

> "A plain reading of the section shows that the State Government under Section 3(1), if satisfied, with respect to any person that with a view to preventing him from acting in a manner prejudicial to the maintenance of "public order", it is necessary so to do, make an order of detention against the person concerned. Sub-section (2) of

Section 3 deals with the delegation of powers by the State Government and provides that if the State Government is satisfied, having regard to the circumstances prevailing in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, it is necessary to empower District Magistrate or the Commissioner of Police, as the case may be to exercise the powers of the State Government to order detention of a person as provided by sub-section (1), then the State Government may, by an order in writing direct that during *such period as may be specified in the order, the District Magistrate or the Commissioner of Police may also if satisfied as provided in sub-section (1), exercise the powers of the State Government* as conferred by sub-section (1). The proviso to sub-section (2), only lays down that *the period of delegation of powers, specified in the order to be made by the State Government under sub-section* (2), delegating to the District Magistrate or the Commissioner of Police the powers under sub-section (1) *shall not in the first instance exceed three months*. The proviso, therefore, has nothing to do with the period of detention of a detenu. The maximum period of detention is prescribed under Section 13 of the Act which lays down that a person may be detained in pursuance of any detention order made under the Act, which has been confirmed under Section 12 of the Act. It is, therefore, futile to contend that the order of detention in the instant case was vitiated because it was for a period more than three months. The second argument, therefore, also fails."

If the order impugned in the writ petition is examined in the light of the judicial interpretation of Section 3(1) of the Act, it is not possible to sustain the detention of the petitioner's husband. No doubt, respondent No.2 has made a reference to the cases registered against the petitioner's husband on the accusation that he is engaged in the trade of illicit

liquor, but there is nothing on the record from which it can be inferred that the officer concerned felt satisfied that the activity of the petitioner's husband was, in any manner, prejudicial to the maintenance of public order. The gravity of the consequences ensuing from the detention of a person needs no emphasis. It deprives a detenue of the basic right to life and liberty. Therefore, strict compliance of the provisions, which empower any authority to pass an order of detention, has to be insisted upon and any lapse in this regard will result in invalidation of the order of detention.

We are further of the view that the order of detention is vitiated due to non-application of mind. The officer concerned failed to note that the petitioner's husband was released on bail in all the four cases. It appears to us that the officer was not even aware of the fact that in all the three cases, the competent court had granted bail to the petitioner's husband and he was a free man on the date of detention. This omission is too serious to be ignored by the Court, because, as mentioned above, the order of detention has grave consequence on the liberty of an individual.

In the result, the writ petition is allowed. Order dated
8-12-2006 passed by Collector and District Magistrate, Hyderabad is quashed. The confirmation of detention order by the State Government is also declared illegal and quashed. The detenue, who is now lodged in Central Prison, Cherlapalli, Hyderabad, shall be set at liberty forthwith, if his presence is not required in connection with any other case.

G.S.SINGHVI, C.J.

C.V.NAGARJUNA REDDY, J.

9th February, 2007

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Note:

The Court Officer is directed to give attested copy of this order to the counsel for the parties.

(By order)

svs

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[1] 1994(1) ALT 396 (F.B.)

[2] 1995(1) ALT (Crl.) 58 (D.B.) (A.P.)

[3] 1995(1) ALT (Crl.) 454 (D.B.) (A.P.)

[4] 1997 (4) ALT 522

[5] (1992) 2 SCC 177